COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 116 of 2002

National Insurance Company Ltd. … **Appellant.**

Versus

Mohammad Gurfan
and another. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 21-2-2002, passed in M.A.C. Petition No. 143 of 2001, Mohammad Gurfan Vs. Bhupesh Kumar and another, by the Motor Accident Claims Tribunal/Additional District Judge, Haldwani (Nainital) ***(hereinafter referred to as the Tribunal)***, whereby the learned Tribunal has awarded a sum of Rs. 2,88,500/- in favour of the claimant-respondent no. 1 as against the Opposite Party No.2 –appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of quantum of compensation and on the findings on rash and negligent driving of the vehicle in question.

It has been contended on behalf of the appellant-Insurance Company that the findings regarding rash and negligent driving by the driver of the vehicle in question are erroneous and against the evidence. It has further been submitted that the quantum of award determined by the learned Tribunal is not based on record, therefore, the impugned judgment and award are not sustainable in the eye of law.

At the outset, it may be mentioned that in view of the contentions raised in the appeal, we are of the opinion that it is not necessary to go into details of the case. A motor accident took place on 24.12.2000 at about 10 a.m. on Bareilly Road, Haldwani, due to rash and negligent driving of the vehicle No. U.P. 02C-9465 in which the claimant sustained injuries and consequently, claim petition has been filed before the learned Tribunal. Both the Opposite Parties, owner and insurer of the vehicle, respondent no.2 and appellant, contested the case by filing written statement. The learned Tribunal, on basis of pleadings of the parties, framed as five issues in the case. Issue No.1 related to rash and negligent driving by the driver of the vehicle in question resulting to injuries to the claimant. Issue No. 2 related to relief. Issue No. 3 related to insurance of the said vehicle at the time of accident. Issue No.4 related to holding of valid driving licence by the driver of the offending vehicle on the date of accident.

After hearing both the parties and considering the evidence on record, the learned Tribunal has held that the injuries caused to the claimant-respondent no.1 in the motor accident, were the result of rash and negligent driving by the driver of vehicle No. UP 02C/9465. It has also been held by the Tribunal that the paper no. 11-C/2 on record is sufficient to show that the said vehicle was duly insured with the appellant-Insurance Company. It has been held that from the perusal of paper no. 7-C/8, the driver of the offending vehicle was holding a valid driving licence on the date of accident. The learned Tribunal found that in the motor accident, the claimant sustained grievous injuries and had to incur expenses wroth Rs. 35,480/-. After considering all the aspects of the case, the learned Tribunal relied on the testimony of P.W. 3 Dr. Chandra Sekhar, who found disability to the extent of 35% on the person of the claimant-respondent. Ultimately, the learned Tribunal has determined total compensation wroth Rs. 2,88,500/- in favour of the respondent no. 1-claimant and accordingly, passed the

impugned judgment and award against the Insurance Company-appellant.

We have heard learned counsel for the appellant Mr. Prabhat Pandey as well as learned counsel for the claimant-respondent, Mr. Mohd. Yusuf and have carefully gone through the entire material beore us including the impugned judgment and award.

Learned counsel for the appellant-Insurance Company has submitted that the findings of rash and negligent driving on the part of the driver of the vehicle in question are not based on evidence on record. It has also been urged that the quantum of compensation is highly excessive and has not been properly determined by the learned Tribunal.

Having heard the arguments of the learned counsel for the appellant and after scrutinizing the entire material before us, we not inclined to accept either of the contentions raised by the Insurance Company, simply because none of two grounds is open to the insurer coming up in appeal in the eye of law as discussed hereunder.

It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the

grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the case of ***"National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others"[(2002) 7, Supreme Court Cases, 456].*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in ***(2002) 7, S.C.C. 456 (supra)***, which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Accordingly, the appeal has no merit and deserves to be dismissed.

The appeal is dismissed. The judgment and award under appeal is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP